

MINUTES OF THE MEETING
OF THE
BOARD OF MEDICINE AND SURGERY

December 2, 2005

ROLL CALL

The meeting of the Board of Medicine and Surgery was called to order by Vice-Chairman Michael Sitorius, MD at 9:01 a.m. on Friday, December 2, 2005, in the Staybridge Room, Staybridge Suite, 2701 Fletcher Avenue, Lincoln, Nebraska. The following members answered to roll call:

Michael A. Sitorius, MD, Vice-Chairman
David A. Dryburgh, Secretary
Larry E. Bragg, MD
Samuel L. Brown, PhD
Vonn Roberts, MD
Carl V. Smith, MD
Arthur A. Weaver, DO

Absent: Randy T. Kohl, MD, Chairman

A quorum was present and the meeting convened.

Also present to participate in the meeting: Terri Nutzman, Assistant Attorney General, Robert Semerena, Administrator, Investigations Division; Michael Grutsch, Program Manager, Investigations Division; Susanne Rydberg, Investigator; Patricia Lemke, Investigator; Marletta Stark, Investigator; Loretta Bennet, Investigator; Duane Newland, Investigator; Jeff Newman, Investigator; Becky Wisell, Section Administrator, Credentialing Division; Vicki Bumgarner, Credentialing Coordinator, Credentialing Division; Meegan Dyrland, Credentialing Specialist, Credentialing Division.

ADOPTION OF AGENDA

Smith moved, seconded by Weaver, to adopt the agenda. Voting aye: Sitorius, Bragg, Brown, Dryburgh, Roberts, Smith, Weaver. Voting nay: None. Absent: Kohl. Motion carried.

INVESTIGATIONAL REPORTS

Smith moved, seconded by Weaver, to go into closed session for the purpose of hearing investigational reports. Voting aye: Sitorius, Bragg, Brown, Dryburgh, Roberts, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried and the meeting went into closed session at 9:04 a.m.

Roberts recused himself from the meeting at 9:05 a.m.

Roberts returned to the meeting at 9:18 a.m.

Ruth Schuldt, Compliance Monitor, Credentialing Division, entered the meeting at 10:27 a.m.

The meeting returned to open session at 11:00 p.m.

MEDICAL APPLICATION REVIEW & DISPOSITION

Initial Licensure

Bryan Lee Kaufman, MD- the Board reviewed information regarding two malpractice claims (Avila, Iman) and a complaint filed in 2002 in Missouri regarding compliance with continuing education requirements. Dryburgh moved, seconded by Smith to approve issuance of a license to Kaufman. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

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Theresa Mae Tilton, MD-the Board reviewed information regarding four malpractice claims (Biggs, Bratt, Carter and Ebarb). Dryburgh moved, seconded by Bragg to approve issuance of a license to Tilton. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Rolf Petter Tonseth, MD-the Board reviewed information regarding the postgraduate medical education which Tonseth obtained in Canada. Tonseth does not have a US social security number, and will not be able to obtain one, since he does not intend to live or work in the United States. Staff is obtaining an opinion from Department Legal Division on whether or not a license can be issued to someone who does not have a social security number. All of Tonseth's postgraduate education was accredited by the Royal College of Physicians and Surgeons of Canada (RCPSC). Regulations Governing Medicine and Surgery define approved graduate medical education as graduate medical education served in the United States or Canada, or any program the Board deems comparable to the requirements of ACGME. Staff wanted to make sure that RCPSC and College of Family Physicians of Canada (CFPC) accredited postgraduate programs are acceptable to meet the requirements to obtain a license. Dryburgh moved, seconded by Smith to approve issuance of a license to Tonseth (if legal decides a license can be issued to an applicant who does not have a US social security number) and to state that RCPSC and CFPC courses are determined to be equivalent to ACGME accredited courses. Applicants having completed postgraduate education accredited by these Canadian entities do not need Board review on that matter. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Chuck Scholtes, PA, member of the Physician Assistant Committee entered at 11:08 a.m.

Jonathan Shapir, MD-the Board reviewed information regarding five malpractice claims (Sapoznik, Klein, Thompson, Botknecht, Lowden), information regarding Shapir's answer to a question on the application regarding complaints, and postgraduate medical education obtained in Canada and accredited by the RCPSC. Smith moved, seconded by Dryburgh to approve issuance of a license to Shapir. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Rodolfo Nellas, MD-application for a license based on reciprocity from the State of Florida. Nellas took and passed the Florida State Board Examination in 1979. The Board had previously reviewed this application regarding a matter of hospital clinical privileges in 1991 in the State of Florida. Dryburgh moved, seconded by Smith, to table a decision and request a pre-licensure investigation regarding this applicant. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Marc S Lessin, MD-the Board reviewed information regarding four malpractice claims (Noiles-Pesnell, Littlefield, Girouard, Gauthier) filed against this applicant. Smith moved, seconded by Bragg to approve issuance of a license to Lessin. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Lawrence Joseph McNamee, MD-the Board reviewed information regarding one malpractice claim (Silver). Smith moved, seconded by Dryburgh to approve issuance of a license to McNamee. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Steven Joseph Buda, MD-the Board reviewed information regarding Buda practicing medicine and surgery in Nebraska without a valid TEP or permanent license. Smith moved, seconded by Dryburgh to assess the maximum fine allowed for unlicensed practice at \$10 per day for 140 days, which is \$1,000, and to approve issuance of a license for Buda. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Reinstatement

Mary Caroline Scheer, MD- application for reinstatement of license after one year from non-disciplinary revocation. The license was revoked for non-payment of the renewal fee in January 1991. Smith

moved, seconded by Dryburgh to reinstate the license for Scheer. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

The Board discussed the requirement for all parts of the licensing examination to be completed within seven years (ten years for MD/PhD candidates) in light of a recent Department decision.

PHYSICIAN ASSISTANT APPLICATION REVIEW & DISPOSITION

Applications for Approval to Supervise More Than Two Physician Assistants

Bernard Hillyer, MD to supervise Carissa Jessen - Hillyer is already certified to supervise two physician assistants. The Board noted that two of the physician assistants are part-time, and the third physician assistant's hours would not make Hillyer's supervision exceed two full-time equivalent employees at any time. Smith moved, seconded by Dryburgh, to approve Hillyer's application to supervise Carissa Jessen, PA, as a third physician assistant. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Jennifer Bengston, MD to supervise Robert Reilly, PA at Ord family Healthcare - Bengston is already certified to supervise two physician assistants. This appears to be a temporary situation because the other physician at this facility, Rachel Blake, MD, is scheduled to return from active duty in Iraq in January 2006. Smith moved, seconded by Bragg, to approve Brown's application to supervise Robert Reilly, PA as a third physician assistant. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Applications for Approval to Supervise Physician Assistant at Secondary Site

David Hoeft, MD to supervise Josalynn Swan, PA – request for only 10% supervision and request to supervise Swan at a secondary site. The proposed secondary site is a "Quick Care" clinic that Alegent Health plans to open at an Omaha grocery store. Cheryl Lindly, PA, from Alegent Health, addressed the Board regarding this application. She provided the Board with information regarding services they intend to provide for this situation. The Board expressed concerns about approving less than 20% supervision because the location is not a shortage area. Scholtes talked about the discussion at the Physician Assistant Committee meeting and their rationale for recommending approval of less than 20% supervision. Weaver moved, seconded by Smith, to deny less than 20% supervision for Hoeft to supervise Swan. Voting aye: Bragg, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: Brown. Absent: Kohl. Motion carried.

Smith moved, seconded by Dryburgh, to approve the application for Hoeft to supervise Swan at the secondary site. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

John Finker, MD to supervise Jon Becker, PA – request to supervise Becker at a secondary site - the Kearney County Medical Clinic in Minden. Smith moved, seconded by Dryburgh, to approve Finkner's application to supervise Jon Becker, PA at the secondary site. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Marshall Brown, MD to supervise Clint Whitwer, PA and his application for approval to supervise Whitwer at Midwest Health Partners' ambulatory clinic at Sunset Plaza in Norfolk, a secondary site for Brown - Smith moved, seconded by Dryburgh, to approve the application for Brown to supervise Whitwer at both the primary and secondary sites listed. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Application for Approval to Supervise Physician Assistant from Physician with Past Disciplinary Action

Dwaine Peetz, MD to supervise Amy Meeks, PA - Peetz's Nebraska physician license was on probation from July 10, 1991 to July 10, 1993. Smith moved, seconded by Dryburgh, to approve Peetz's application to supervise Amy Meeks, PA. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Application to Supervise a Physician Assistant for Less than 20% Supervision

Gregory Kloch, MD to supervise Sid Jaeger, PA at approximately 18% supervision - Jaeger works with Kloch 11 hours per week and is on-call for the Tri-County Hospital Emergency Room approximately 52

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hours per week. Weaver moved, seconded by Smith, to approve Kloch's application to supervise Sid Jaeger, PA at less than 20% supervision. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Elvira Rios, MD to supervise Stella Washington, PA, at 0% physical supervision -ios explained in her application that supervision for Washington would occur by telephone. Washington will screen phone calls forwarded to her by Rios' answering service during week-ends when Rios is on-call. Rios will not be physically present. The Board commented that this PA does not work with Rios at all during the regular work week. The Board stated it would be difficult to approve this since it is not a shortage area, which is one of the exceptions to the 20% rule. Bragg moved, seconded by Roberts, to approve Rios' application to supervise Stella Washington, PA at less than 20%. Voting aye: Bragg, Roberts. Voting nay: Brown, Dryburgh, Sitorius, Smith, Weaver. Absent: Kohl. Motion failed.

Smith moved, seconded by Dryburgh, to deny Rios' application to supervise Stella Washington, PA at less than 20% supervision. Voting aye: Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: Bragg. Absent: Kohl. Motion carried.

2006 PROPOSED LEGISLATION

Uniform Licensing Law (ULL) Rewrite

The Board discussed final modifications to the draft of revisions to the Uniform Licensing Law that is proposed as legislation to be entered by the Department in 2006.

Practice Act Changes

The Board discussed final modifications to the draft of revisions to the Medicine and Surgery Practice Act that is proposed as legislation to be entered by the Department in 2006. Discussion included the following:

Neb. Rev. Stat. 71-1,103(6) - The Board discussed the statutory definition for the practice of medicine and surgery, specifically subsection (6) which includes persons who attach to their name the title of M.D., etc. The Board stated they would like to change the language to be similar to the definition found in the FSMB Model Practice Act for use of these terms.

The Board discussed current statutory language which states that an applicant must complete all parts of the licensing examination within seven years from the date of the first passed part, except that MD/PhD candidates at accredited institutions have ten years to complete all parts. Brown moved, seconded by Dryburgh, to revise the Practice Act to allow for a ten year limit for all applicants to pass all parts of the licensing exam. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

The Board wanted to remove language in the Practice Act which limits a temporary educational permit to five renewal periods, as long as the individual is still enrolled in the Nebraska residency program.

The Board discussed the competency requirements for initial licensure and reinstatement of licensure. Smith moved, seconded by Roberts, that the maintenance of competency requirements for reinstatement outlined in the Regulations be revised to mirror the competency requirements for initial licensure. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Call For Nominations

Weaver moved, seconded by Bragg, to recommend that Kohl be nominated to run for election to the Board of Directors for the Federation of State Medical Boards (FSMB). Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Bragg moved, seconded by Smith, to send a letter to the FSMB recommending that Dryburgh be appointed to serve on a committee for the FSMB. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

Call for Resolutions

The Board discussed if they would like to propose any resolutions to be made at the annual meeting of the FSMB.

Roberts stated he is concerned about use of the term “board certified” by physicians. He felt this designation should only be used if the physician is board certified by an American Board of Medical Specialty (ABMS) approved specialty board. Staff will see if the FSMB has a policy or other information on this matter.

Report of Special Committee on Evaluation of Undergraduate Medical Education

The Board reviewed the FSMB Report of the Special Committee on Evaluation of Undergraduate Medical Education. Bumgarner reported on the FSMB Roundtable she attended via conference call regarding this report.

The Board stated they would encourage the FSMB to follow the recommendations made by the Special Committee.

Smith stated that he would not be in favor of requiring that the three years of approved postgraduate education required for licensure of a foreign medical graduate be modified to require three progressive years of approved postgraduate education.

Draft Policy Addressing Sexual Boundaries: Guidelines for State Medical Boards

The Board reviewed the FSMB draft Policy Addressing Sexual Boundaries: Guidelines for State Medical Boards.

FSMB Annual Meeting April 20-22, 2006 , Boston, Massachusetts

Smith moved, seconded by Dryburgh, to recommend that the Department approve travel for all the Board Members to attend the FSMB Annual Meeting. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

REPORT ON CITIZEN ADVOCACY CENTER MEETING

Dryburgh and Brown reported on some highlights from the Citizen Advocacy Center (CAC) Meeting held in Denver, Colorado. Dryburgh stated that the CAC is suggesting that board meetings be held entirely in open session – even the investigative reports. Brown discussed information he obtained regarding evidence-based performance measures.

Brown and Dryburgh also mentioned the idea of a Board retreat. This would allow the Board to take the time to discuss issues that they otherwise would not have time for. Brown and Dryburgh will identify possible topics for a retreat to continue the discussion at the next meeting.

This topic was tabled until a future meeting.

PHARMACEUTICAL CARE AGREEMENTS

The Board reviewed the pharmaceutical care agreements submitted by Linda K. Ohri, Pharm, D., Creighton University Medical Center; Gene Wyse, DO, et al, Hastings Regional Center; and Irma Gail Deyle, RP, Creighton University Medical Center.

APPROVAL OF MINUTES OF THE MEETING FROM OCTOBER 7, 2005

Smith moved, seconded by Dryburgh, to approve the minutes of the October 7, 2005 meeting. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

FINANCIAL REPORT & APPROVAL OF FY06 BUDGET

The Board reviewed the financial report as of October 31, 2005 and the proposed budget for Fiscal Year 2006. Smith moved, seconded by Dryburgh to approve the FY06 budget. Voting aye: Bragg, Brown, Dryburgh, Roberts, Sitorius, Smith, Weaver. Voting nay: none. Absent: Kohl. Motion carried.

DISCIPLINARY INFORMATION – ACTIONS TAKEN & PENDING

The Board reviewed the actions taken and pending since the last meeting.

At the last meeting, the Board had requested an update on the Kerrey B. Buser, MD case from James D. Smith, Assistant Attorney General. Smith was not able to attend this meeting, so Wisell summarized an update on the case which Smith provided. The Board requested further information and that Smith attend the next meeting.

LB 551 REGARDING SUPERVISION OF ALCOHOL AND DRUG COUNSELORS

This item was tabled until the next meeting.

BOARD OF MEDICINE AND SURGERY NEWSLETTER

The Board discussed implementation of a Board newsletter. They stated that perhaps Joseph Scott, MD and Kay Kahla are still interested serving as co-editors for the newsletter. It was felt that they would need to attend the meetings in order to be up to date on Board issues. The Department could execute a contract with them to reimburse for their expenses to attend the meetings. The intent would be that Scott and Kahla would write the articles and staff would develop the articles into a newsletter format.

DATABASE OF BOARD RECOMMENDATIONS

Staff shared with the Board a simple format summarizing the Board's recommendations on disciplinary cases. This could be referenced until an electronic agenda program is in place that would possibly be more useful.

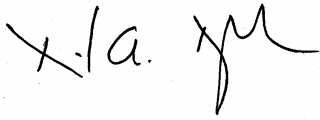
PAPERLESS MEETINGS

Wisell updated the Board on the current status of the project to move to paperless meetings through use of electronic technology. She stated that she included funds to purchase laptop computers in the budget for FY06.

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ADJOURNMENT

There being no further business, the meeting adjourned at 2:09 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D.A. Dryburgh', written over a light gray rectangular background.

David A. Dryburgh, Secretary
Board of Medicine and Surgery